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**Introduced by Mayor Moyer
Alderman Hoyle
Alderman Kelley
Alderman Cordle
Alderman Fox
Alderman Cohen**

Thomas Point Lighthouse Title and Lease

* * * * *

ADOPTED this 22nd day of December, 2003.

THE ANNAPOLIS CITY COUNCIL

BY: _____
ELLEN O. MOYER, MAYOR

EXPLANATION:

Redlining indicates matter added to existing law.

~~Strike Out indicates matter deleted from existing law.~~

Underlining and redlining indicate amendments.

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CITY OF ANNAPOLIS
LONG-TERM LEASE
OF THE
THOMAS POINT SHOAL LIGHTHOUSE
TO THE
UNITED STATES LIGHTHOUSE SOCIETY

Background

In early 2003, the General Services Administration (GSA) announced that it would be excessing the Thomas Point Shoal Lighthouse on behalf of the federal government, following the provisions of the National Historic Lighthouse Preservation Act of 2000 (NHLPA). This Act allows no-cost transference of a lighthouse to another government agency (federal, state, or local level) or to a non-profit organization for the purposes of historic preservation, education, cultural, resource, or park use, with reasonable public access. In accordance with the NHLPA process, the United States Lighthouse Society and its Chesapeake Chapter (USLHS) submitted a letter of interest (LOI) for the lighthouse property. In response, the National Park Service (NPS) forwarded a formal NHLPA application package to the USLHS. In the spring of 2003, the USLHS and its Chesapeake Chapter, the City of Annapolis, the Annapolis Maritime Museum, and Anne Arundel County met to discuss Thomas Point Shoal Lighthouse and to pursue ownership of the historic structure through the NHLPA process.

Recognizing the longevity of the City of Annapolis and its excellent track record of historic preservation, the parties agreed that although the USLHS and its Chesapeake Chapter would develop the NHLPA application, it would identify the City of Annapolis as its partner in the application, indicating that the title/deed to the lighthouse should be given to the City in case of a winning application. Recognizing the lighthouse knowledge and expertise of the USLHS and its Chesapeake Chapter, the parties also agreed that the City of Annapolis would enter into a long-term lease agreement with the USLHS and its Chesapeake Chapter for all aspects of the planning, preservation, restoration, and operations of the lighthouse in compliance and accordance with the Application.

The intent has been to establish a win-win relationship between the City of Annapolis and the USLHS and its Chesapeake Chapter, bringing together the strengths and capabilities of each for the benefit of the preservation, restoration, and public use of the lighthouse.

Lease Elements

1. If the City of Annapolis is given title to the Thomas Point Shoal Lighthouse property by the federal government, the City gives the USLHS and its Chesapeake Chapter all and exclusive rights to plan, preserve, restore, maintain, and operate Thomas Point Shoal Lighthouse in accordance with the NHLPA application submitted to the federal government, hereafter referred to as the “Application”. Since the Application becomes the legally binding document between the federal government and the entity to which it transfers title, i.e., the City of Annapolis, it similarly codifies the scope of all of the activities to be performed by the USLHS and its Chesapeake Chapter, as the operations agent of the owner.
2. All management, insurance, and financial arrangements are also codified in the Application. The City and the USLHS and its Chesapeake Chapter will abide by these arrangements (each has a role). This is a no-cost lease from the City to the USLHS and its Chesapeake Chapter, i.e., there is no lease payment from the USLHS and its Chesapeake Chapter to the City.
3. The USLHS and its Chesapeake Chapter, as the lessee and lighthouse operations agent, will normally receive all income associated with Thomas Point Shoal Lighthouse (e.g., fund-raising from donors, operating income from tours). Similarly, the USLHS and its Chesapeake Chapter will normally pay for all expenses associated with the lighthouse from this income. Specific projected income and expenses will be identified in an annual Financial Plan, which would include any potential financial responsibilities and revenue sharing for the City of Annapolis or other organizations. Any expenses paid directly by the City on behalf of the lighthouse effort that are in accordance with the annual Financial Plan will be reimbursed to the City by the USLHS and its Chesapeake Chapter, or will be noted as a credit, at the discretion of the City. Nothing in this lease shall obligate the City for any expenditures not previously approved by the City Council.
4. The City and the USLHS and its Chesapeake Chapter agree that any and all funds that are raised for the preservation, restoration, maintenance and operation of the lighthouse will be used only for those purposes, i.e., funds could not be withdrawn from one of the partners for other general purposes not having to do with the preservation, restoration, maintenance, and operation of the Thomas Point Shoal Lighthouse. If and when the revenues from all sources far exceeds all projected expenditures on a regular basis and an appropriate management reserve has been built up, the City and the USLHS and its Chesapeake Chapter may choose to pursue potential exceptions to this stipulation (i.e., use excess income for purposes other than the lighthouse) via the Changes clause of this lease, as long as the proposed uses are not in non-compliance with the NHLPA and the Application.
5. City will not impose any further requirements on the USLHS and its Chesapeake Chapter beyond what is documented in the Application. USLHS and its Chesapeake Chapter will not conduct any activities that are not identified in the Application.

6. Similarly, neither the City or the USLHS and its Chesapeake Chapter can enter into any agreements regarding Thomas Point Shoal Lighthouse with other parties that are not identified in the Application or enter into any agreements that are inconsistent with the intent of the Application; any proposed agreements with additional parties not identified in the Application will require mutual prior approval from both the City and the USLHS and its Chesapeake Chapter.
7. Term of this lease from the City of Annapolis to the USLHS and its Chesapeake Chapter is 30 years plus two options of 30 years each. At the end of each 30-year lease period, the City and the USLHS and its Chesapeake Chapter will review the lease, make any mutually agreeable changes, and re-sign the lease. The City may not refuse to re-sign the two lease options unless it can demonstrate that the USLHS and its Chesapeake Chapter have not complied with the NHLPA and the Application, in accordance with the Termination clause of this lease.
8. Changes: Changes to this lease may be made by mutual written agreement of the City of Annapolis and the USLHS and its Chesapeake Chapter, as long as the proposed changes are not in non-compliance with the NHLPA and the Application.
9. Termination:
 - a. The City can terminate this lease with the USLHS and its Chesapeake Chapter only if USLHS does not abide by its commitments in the Application, therefore jeopardizing the city's ownership of Thomas Point Shoal Lighthouse. The City will give USLHS three months to rectify any deviations from the Application and if not corrected, it will give USLHS 30 days written notice of termination of lease.
 - b. USLHS and its Chesapeake Chapter can terminate the lease if it finds that it can no longer abide by the Application. It will give the City three months written notice so that City can take appropriate action with the federal government, if needed.
10. The USLHS shall, at its sole expense, fully indemnify, defend and hold harmless the City, and in their capacity as such, the officers, agents and employees thereof, from and against any and all claims, suits, actions, liability and judgments for damages for actual or alleged injury to persons or property (including loss of use of property whether or not such property is physically damaged or destroyed), in any way arising out of or through, or alleged to arise out of or through, any act or omission of the USLHS, or of any officer, agent, or employee of the USLHS
11. Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in the defense of any litigation by their own counsel at their sole expense. Such participation shall not under any circumstances relieve the indemnifier from its duty of paying any judgment entered against the indemnified party.

FOR THE UNITED STATES LIGHTHOUSE
SOCIETY AND ITS CHESAPEAKE CHAPTER:

Wayne Wheeler, President USLHS

Date: _____

Henry Gonzalez,
Vice President East Coast Operations
Chairman, Chesapeake Chapter

ATTEST:

CITY OF ANNAPOLIS:

Deborah Heinbuch, City Clerk

BY _____
Ellen O. Moyer, Mayor

Approved as to form and legal sufficiency:

Shaem C. Spencer, City Attorney

Date _____